IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8902 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE JAYSAGAR MATSYODHYOG SAHKARI MANDALI LTD.

Versus

GUJARAT MARITIME BOARD

Appearance:

1. Special Civil Application No. 8902 of 2003

MR AM DAGLI FOR MR YOGESH S LAKHANI for Petitioner No. 1

MR PR NANAVATI for Respondents.

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 01/08/2003

ORAL JUDGEMENT

1 Heard Mr.Dagli for Mr.Y.S.Lakhani for the petitioner and Mr.Premal R.Nanavati for the respondents.

2 Rule. Mr.P.R.Nanavati, learned Advocate appears and waives service of rule on behalf of the respondents. By consent of both the sides the matter is taken up for final hearing and disposal today.

3 The petitioner is a Cooperative Society operating in Veraval. The petitioner requested for allotment of plot to start a Diesel Supply Pump so as to enable the Fishermen to easily obtain the diesel. On 20/3/2001 a plot of land in Bhidiya area, Veraval came to be allotted to the petitioner for the purpose of diesel supply pump. It is pertinent to note that all the necessary documents as were required were supplied to the respondent authorities. The amount of Rs.12,000/- was deposited as advance rent and ultimately a lease deed came to be executed on 21/6/2001 between the petitioner on one hand and the Chairman of the respondent - Gujarat Maritime Board. Thereafter, as required the petitioner was furnished No Objection Certificate dated 28/6/2001 by the Port Officer, Veraval from the office of Gujarat Maritime Board, Veraval that the lessee - petitioner may be granted electricity connection. On 30/4/2001 the petitioner was directed not to start any activity on the land allotted to the petitioner in violation of provisions of CRZ Notification of 1991. The petitioner also kept on corresponding with various authorities for obtaining CRZ clearance from time to time.

4 It is the case of the petitioner that on 2/6/2003 the Port Officer wrote to the petitioner stating that the plot which was leased out to the petitioner on 22/3/2001 had to be taken back as the allotment has been cancelled by a memorandum dated 29/4/2003 which was annexed with the aforesaid communication dated 2/6/2003. It is the aforesaid communication dated 2/6/2003 along with the memorandum dated 29/4/2003 which is under challenge in the present petition.

5 Mr.Dagli, learned Advocate submitted that the impugned communication as well as the memorandum are totally bereft of reasons for cancelling allotment and in such a situation it would reflect total non application of mind at the end of respondent authorities. It was also further submitted that there was violation of principles of natural justice, in as much as the petitioner has not even been given any opportunity and there was no material or basis on which any such cancellation of allotment could be made by the respondent authorities. Mr.Dagli further submitted that the petitioner had already invested huge amount by depositing

advance rent, as well as making various payments for obtaining necessary clearance etc. In the circumstances, in absence of any opportunity of hearing the impugned order/communication could not have been made by the respondent authorities.

6 Mr.P.R.Nanavati, learned Advocate appearing on behalf of Gujarat Maritime Board contended that the Board was the authority which had allotted the plot and it was open to the authority in the circumstances to cancel the allotment. That though adequate time had been granted to the petitioner it had failed to obtain and present CRZ clearance certificate as required.

7 Mr.Dagli in rejoinder pointed out that the aforesaid reason of non availability of CRZ clearance certificate has come only by way of oral contention by the learned Advocate and the same is not reflected in the order or communication. In the circumstances, it was submitted by Mr.Dagli that the respondent authorities should be directed to give adequate opportunity to the petitioner before passing any adverse order.

8 Having heard both the sides it is apparent that the impugned communication dated 2/6/2003 merely forwards the memorandum dated 29/4/2003. The said memorandum which is signed by the Vice-Chairman and Chief Executive Officer of Gujarat Maritime Board reads as under :

> "A piece of land measuring 400 sq.mtr. at Bhidiya area, near Dungali Vandi at Veraval Port has been allotted to Shree Jaysagar Matsyodhyog Sahakari Mandali Ltd., Veraval for the purpose of constructing a Diesel Pump for a period of 5 (five) years vide this office order No.GMB/G/VRL/247/3089 dated 22/03/2001, the said allotment is hereby cancelled".

9 On plain reading of the aforesaid memorandum it is apparent that it is a unilateral declaration of cancellation without being backed by any valid reason. The respondent authorities have not been able to show from the record that any opportunity of hearing was granted to the petitioner, or that the respondent authorities have any material available with them which would permit them to cancel the allotment in a summary manner. It is not even suggested in the impugned communication or the memorandum that the petitioner had committed any breach of terms of lease deed entered into between the parties. Needless to state that, in the circumstances, a contract having been entered into

between the parties the respective rights of the parties shall be governed by the terms of the contract and cancellation of the said lease shall have to be in light of the terms contained in the said deed.

10 In light of what is stated hereinbefore the impugned communication dated 2/6/2003 along with annexed memorandum dated 29/4/2003 are hereby quashed and set aside. The respondent authorities , if they so desire, before taking any action for cancellation of the lease shall grant an adequate opportunity of hearing to the petitioner before making any adverse order.

11 The petition is accordingly allowed. Rule made absolute. There shall be no order as to costs. Direct service permitted.

(D.A.Mehta, J)

m.m.bhatt